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# TROUTMAN SANDERS

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July 11, 2017

Lisa Lavie Jordan, Director  
Corinne Van Dalen, Supervising Attorney  
Tulane Environmental Law Clinic  
6329 Freret Street  
New Orleans, LA 70118

Re: Georgia-Pacific Crossett, AR

Dear Counsel:

I am writing to you on behalf of my client, Georgia-Pacific Crossett LLC, to raise a very serious issue that requires correction. For almost a decade, the Tulane Environmental Law Clinic and its clients, including the Louisiana Environmental Action Network and the Ouachita Riverkeeper (collectively, TELC) have persistently and publicly presented to state and federal agencies misinformation related to Georgia-Pacific's mill in Crossett, Arkansas. This misinformation has been employed as part of a campaign that can at best be characterized as an effort to interfere with Georgia-Pacific's lawful and permitted operations at the Crossett mill. This campaign has been advanced through lawsuits, threatened lawsuits and other administrative actions against the U.S. Environmental Protection Agency (EPA), the Arkansas Department of Environmental Quality (ADEQ) and Georgia-Pacific, including, without limitation:

1. Letter to ADEQ dated June 2009, opposing the approved use variations for Coffee Creek and Mossy Lake.
2. Comments to ADEQ dated February 2010, opposing draft National Pollutant Discharge Elimination System (NPDES) Permit No. AR0001210.
3. Comments to ADEQ dated July 2010, opposing the approved use variations for Coffee Creek and Mossy Lake.
4. Letter to EPA dated March 2011, asking EPA to overfile, revoke and reissue NPDES Permit No. AR0001210.
5. Letter to EPA dated December 2013, asking EPA to object to ADEQ's triennial review of water quality standards, with a specific focus on the approved use variations for Coffee Creek and Mossy Lake.

# TROUTMAN SANDERS

Lisa Lavie Jordan, Director  
Corinne Van Dalen, Supervising Attorney  
July 11, 2017  
Page 2

6. Lawsuit against EPA, filed December 2014, alleging that EPA committed legal error in not objecting to ADEQ's reissuance of NPDES Permit No. AR0001210.
7. Petition to EPA dated September 2015, seeking to force EPA to remove the approved use variations for Coffee Creek and Mossy Lake.
8. Complaint to EPA under Title VI of the Civil Rights Act, dated April 2016, alleging discrimination by ADEQ in administratively continuing NPDES Permit No. AR0001210 pending reissuance.
9. Letter dated November 2016, objecting to Georgia-Pacific's comments on Title VI complaint.
10. Notice letter to EPA, dated December 2016, threatening lawsuit to compel action on earlier water quality standards petition related to Coffee Creek and Mossy Lake.
11. Petition to EPA, dated May 2017, to object to draft NPDES Permit No. AR0001210. We note that this is the latest in a failed string of at least five attempts – all on essentially the same grounds – to force EPA to take over the permit for the Crossett mill, notwithstanding the fact that EPA has consistently and repeatedly declined to do so (decisions that are squarely within EPA's discretion and technical expertise).

In each case, TELC's actions have been predicated on a fundamentally misleading and inaccurate set of facts about the mill's wastewater treatment system and receiving waterbodies. TELC has never meaningfully sought to engage Georgia-Pacific to get an accurate set of facts. To the contrary, TELC has systematically excluded Georgia-Pacific (and often ADEQ, as well) from its correspondence and meetings with EPA. Georgia-Pacific has made repeated good faith attempts to correct TELC's misunderstandings. Nonetheless, TELC has ignored Georgia-Pacific's efforts to set the record straight and continues to perpetuate – and indeed promote – misinformation about Georgia-Pacific's operations. Those operations and related environmental conditions are properly characterized, in relevant part, as follows:

- a. TELC has repeatedly asserted that Georgia-Pacific discharges untreated effluent into Coffee Creek at the mill site. This is fundamentally incorrect. When the facility began manufacturing lumber in 1899 and later pulp and paper in 1937, the discharge from these operations flowed into the Coffee Creek drainage as it left the mill site. However, due to changes in the drainage basin over time, including the collection of storm water via constructed channels in the area, the drainage known as Coffee Creek does not exist on the mill site today, and for decades, the mill's untreated effluent has been separate from Coffee Creek.

# TROUTMAN SANDERS

Lisa Lavie Jordan, Director  
Corinne Van Dalen, Supervising Attorney  
July 11, 2017  
Page 4

Georgia-Pacific is in compliance with this permit. ADEQ and EPA have indicated that they plan to review the use variations as part of the next triennial review of water quality standards beginning in 2017. As part of that review, the agencies will need to consider the use attainability analyses conducted for Coffee Creek and Mossy Lake, the most recent of which was completed in November 2013. Mossy Lake, and the segment of Coffee Creek downstream from Mossy Lake, are subject to seasonal flooding and are inundated by the Ouachita River approximately 43% of the year. Any existing uses in these waters – which are co-extensive with Georgia-Pacific's operations in Crossett since 1937 – are necessarily influenced by these seasonal conditions.

- g. The Arkansas Department of Health (ADH) and the Agency for Toxic Substance and Disease Registry (ATSDR) recently completed and released a joint health consultation for Crossett.<sup>1</sup> This health consultation was based on years of statistical health data maintained by ADH for Ashley County and the State of Arkansas. This study concluded “there is no significant difference to indicate elevated cancer cases for Ashley County as compared with the state of Arkansas.” Also, working cooperatively with the EPA, ADEQ and ADH, Georgia-Pacific has voluntarily been operating a continuous H2S ambient air monitor since October 2014. This monitoring confirms that emissions from the wastewater treatment system are not creating unsafe or harmful conditions. In fact, between November 1, 2014 and July 1, 2017, there were approximately 64 hours where the H2S monitor recorded levels above the suggested intermediate exposure MRL of 70 ppb, when measured over a 30 minute rolling average. This represents 0.27% of the 23,352 total hours monitored. Georgia-Pacific notes that all the data it has collected to date has been below the applicable MRLs when the appropriate averaging periods established by ATSDR are applied.

Georgia-Pacific has repeatedly attempted to correct TELC about its misstatements and directed TELC to the relevant law. We will have no choice but to assume that if you continue to perpetuate and promote misinformation, your purpose is to harm and interfere with Georgia-Pacific's lawful and permitted operations. If TELC persists in its tactics, we will be forced to take this matter to appropriate authorities for relief.

<sup>1</sup> June 6, 2016: Review of Community Drinking Water and Health Outcome Data in Response to Community Requests of Residents Near the Georgia-Pacific Corporation Crossett Paper Operations 100 Mill Supply Road Crossett, Ashley County, Arkansas 71635; EPA Identification Number: ARD035466648 AFIN Number: 02-00013; Prepared By: Arkansas Department of Health Under a Cooperative Agreement with the U.S. Department of Health and Human Services Agency for Toxic Substances and Disease Registry Atlanta, Georgia 30333; [http://www.atsdr.cdc.gov/HAC/pha/GeorgiaPacificCorporation/Georgia\\_Pacific\\_Corporation\\_Crossett\\_AR\\_HC\\_06-06-2016\\_508.pdf](http://www.atsdr.cdc.gov/HAC/pha/GeorgiaPacificCorporation/Georgia_Pacific_Corporation_Crossett_AR_HC_06-06-2016_508.pdf)

# TROUTMAN SANDERS

Lisa Lavie Jordan, Director  
Corinne Van Dalen, Supervising Attorney  
July 11, 2017  
Page 3

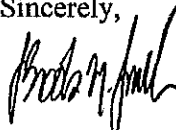
- b. Process wastewater from the mill is routed through two underground enclosed pipelines to the primary clarifier, which is the start of the wastewater treatment system. Throughout this 1 mile length of pipe, there is no "open sewer" that could expose residents to untreated wastewater. The nearest residence to the clarifier is 0.45 miles away, and the West Crossett community is approximately 0.7 miles away. TELC repeatedly mischaracterizes and misrepresents the underground enclosed pipelines (as well as other, unrelated non-industrial stormwater conveyances) as "a toxic flume" and "an open sewer ... within one hundred feet of some West Crossett residences."
- c. Wastewater from the clarifier is routed through conveyance channels to the aeration basin for secondary treatment, and water from this basin is discharged through the mill's NPDES permitted discharge point, which flows into the upper reaches of Mossy Lake. The mill's permitted wastewater treatment system and associated channels are wholly separate and distinct from Coffee Creek, which is an ephemeral stream prior to its confluence with Mossy Lake.
- d. TELC alleges that portions of the wastewater treatment system occupy waters of the U.S. and, as a result, discharges into the system must be permitted. This position is contrary to both the facts set forth above and the law. TELC fundamentally misreads the "waste treatment system" exclusion under the Clean Water Act. TELC claims that the exclusion does not apply to treatment ponds constructed in waters of the U.S., but TELC ignores the fact that this "exclusion from the exclusion" was suspended by EPA and has never been reinstated. *See* 45 Fed. Reg. 48,620 (July 21, 1980). TELC also ignores the fact that the reported case law applies the exclusion not just to treatment ponds but also to the conveyances leading into those ponds. *See, e.g., Ohio Valley Envtl. Coal. v. Aracoma Coal Co.*, 556 F.3d 177 (4<sup>th</sup> Cir. 2009). In short, to the extent the wastewater treatment system was constructed in the historic Coffee Creek drainage, the entire system, from the mill site to the upper reaches of Mossy Lake, is excluded.
- e. TELC's allegation that Georgia-Pacific's discharge eliminates the West Crossett community's "use of Coffee Creek as a natural resource" is inaccurate on two fronts: (1) Georgia-Pacific's untreated wastewater is not discharged into Coffee Creek; and (2) the vast majority of Coffee Creek is on private property with no access to the public.
- f. Under the legally "applicable" water quality standards for Arkansas (*see* 40 CFR § 131.21), use variations are in place for Coffee Creek and Mossy Lake. NPDES Permit No. AR0001210 ensures compliance with the applicable standards, and

TROUTMAN  
SANDERS

Lisa Lavie Jordan, Director  
Corinne Van Dalen, Supervising Attorney  
July 11, 2017  
Page 5

Please understand that we take this matter very seriously. Georgia-Pacific has an unwavering commitment to compliance and protection of human health and the environment and has been and remains willing to engage with any stakeholder that has concerns or questions about its operations. We will not, however, stand by and allow any party to falsely portray Georgia-Pacific's operations to government officials. If you have any questions or would like to discuss anything further, please call me.

Sincerely,



Brooks M. Smith  
Counsel to Georgia-Pacific

BMS:hmn

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# TROUTMAN SANDERS

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July 11, 2017  
Page 6

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TROUTMAN  
SANDERS

Lisa Lavie Jordan, Director  
Corinne Van Dalen, Supervising Attorney  
July 11, 2017  
Page 7

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